IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

WRIT PETITION NO. 523 (MS) OF 2006

Surendra Dev,
S/o late Shankar Dev,
R/o Arya Nagar, Gadarpur, Tehsil-Gadarpur,
District-Udham Singh Nagar. .....Petitioner.

Versus

1. Judge, Family Court, District-Udham Singh Nagar.
2. Smt. Sonia Arya, D/o Ganesh Prasad,
   R/o Mohalla-Ganesh Nagar, Subhash Nagar, Bareilly, U.P. .....Respondents.

Dated: 09.05.2006

Hon'ble Rajesh Tandon, J.

Heard Sri Sudhir Singh, Advocate for the petitioner and Standing Counsel for the respondent no.1.

Both the parties have agreed that let the matter be finally disposed of at the admission stage.

By the present writ petition, the petitioner has prayed for a writ of certiorari quashing the part of order dated 17th April, 2006 passed by the respondent no. 1 so far as it relates to staying of trial proceedings of the Case No. 74/2005 Surendra Dev Vs. Sunita Arya U/s 13 of the Hindu Marriage Act.

Briefly stated, the petitioner initiated proceedings U/s 13 of the Hindu Marriage Act for grant of divorce against the respondent no. 2, which was registered as Case No. 74/2005 Surendra Dev Vs. Sunita Arya. During the pendency of the case U/s 13 of the Hindu Marriage Act filed by the petitioner, the

respondent no. 2 moved an application dated 06.08.2005 under Section 24 of the Hindu Marriage Act for grant of interim maintenance. The said application was rejected on 20.09.2005 on some technical grounds and thereafter on 3rd October, 2005, respondent no. 2 did not appear before the Court to file the written statement, therefore, the respondent no. 1 passed an order that the Suit may be proceeded ex parte.

The respondent no. 2 moved an application for recalling the order by means of which the Suit was directed to be proceeded ex parte. The petitioner filed his objection against the aforesaid application.

The learned trial Court did not recall the order dated 20.09.2005 but permitted the respondent no. 2 to move another application U/s 24 of the Hindu Marriage Act. In pursuance of this, the respondent no. 2 moved another application U/s 24 along with affidavit on 30.01.2006.

On 17.04.2006, the petitioner filed an application under Order 13 Rule 10 of C.P.C. along with an affidavit before the trial Court for summoning the evidence of income procured by the respondent no. 2 from the post office concerned.

The respondent no. 1 passed an order on 17.04.2006 stating therein that since the petitioner has filed an application under Order 13 Rule 10 of C.P.C., which is causing delay in the disposal of application U/s 24 of the Hindu Marriage Act, therefore, the proceedings of suit U/s 13 shall remain stayed till the disposal of application U/s 24 of the Hindu Marriage Act. The respondent no. 1 also directed the petitioner to pay a sum of Rs. 2,000/- to the respondent no. 2.

The grievance of the petitioner is that the proceeding U/s 13 of the Hindu Marriage Act has been held up due to the stay order. The interest of justice, therefore requires that let the document be placed as stated by the petitioner in his

application dated 17th April, 2006. The document could not be called and the application U/s 24 of the Hindu Marriage Act may be disposed of within a period of six weeks. Thereafter, the proceedings U/s 13 of the Hindu Marriage Act may be expedited and it may be disposed of within a period of four months. So far as the amount of Rs. 2,000/- is concerned, the petitioner shall pay the amount in two instalments of fifteen days and the same shall be subject to the adjustment at the time of the final order passed under section 24 of the Hindu Marriage Act.

In view of the above, writ petition is disposed of. No order as to costs.

(Rajesh Tandon, J.)

09.05.2006
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